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**JAN 26 2007**

**OFFICE OF PETITIONS**

Edward & Angel LLP  
P.O. Box 55874  
Boston, MA 02205

In re Application of :  
Fukumitsu et al. :  
Application No. 10/649,228 : DECISION GRANTING PTA  
Filed: August 26, 2003 :  
Attorney Docket 58807-RCE (47793) :

This decision is in response to applicants' PETITION FOR REVIEW OF PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705 AND 1.703(a)(1) timely<sup>1</sup> filed on October 12, 2006. The applicants notes that the determination at the time of the mailing on the notice of allowance is 230 days not 173 days.

Applicants' petition is GRANTED. The USPTO will adjust the PAIR calculation at the time of the mailing of the notice of allowance to reflect a determination of 230 days.

Applicants assert that the USPTO erred in awarding only 204 days of PTA for failing to meet the requirements of 37 CFR 1.702(a)(1). Applicants assert that the correct amount of PTA under this provision is 261 days. Applicants assert that the filing date is August 26, 2003 not October 2003. In addition, the Applicants do not contest the reduction of 31 days under 37 CFR 1.704(b).

Patentees arguments are persuasive. The USPTO finds that the proper filing date of the application was August 26, 2003. Accordingly, the USPTO should have assessed a delay of 261 days for violation of 37 CFR 1.702(a)(1). The Office notes that although an notice of missing parts was mailed to applicants, the filing date of the application was assigned August 26, 2003. Accordingly, the overall determination at the time of the mailing of the notice of allowance is 230 (261-31=230) days.

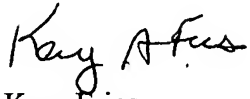
After the mailing of this decision, this application will be forwarded to the Office of patent publications for a prompt issuance of the patent. The USPTO notes that any applicant delays pursuant to 37 CFR 1.704(c)(10) or USPTO delays pursuant to 37 CFR 1.702(b) or 1.702(a)(4) will be determined at the time of the issuance of the patent and will be reflected in the issue notification letter that is mailed to applicant approximately two and 1/2 weeks prior to issuance of the patent.

The Office has assessed the \$200.00 fee required of this request. No additional fees are required in considering this matter.

Any questions should be directed to Kery A. Fries, Senior Legal Advisor, at 571-272-7757.

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<sup>1</sup>Issue fee paid on October 12, 2006.

A handwritten signature in black ink, appearing to read "Kery Fries". The signature is fluid and cursive, with the first name "Kery" being more prominent than the last name "Fries".

Kery Fries  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner  
for Patent Examination Policy

cc: ADJUSTED PAIR CALCULATION

Day : Thursday  
Date: 1/25/2007 **PALM INTRANET**

Time: 13:44:59

**PTA Calculations for Application: 10/649228**

Application Filing Date:	08/26/2003	PTO Delay (PTO):	204
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	31
Post-Issue Petitions:	0	Total PTA (days):	230
PTO Delay Adjustment:	57		

**File Contents History**

Number	Date	Contents Description	PTO	APPL	START
60	01/25/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	57		
52	07/12/2006	MAIL NOTICE OF ALLOWANCE			
51	07/12/2006	MAIL EXAMINER'S AMENDMENT			
50	07/10/2006	ISSUE REVISION COMPLETED			
49	07/10/2006	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
48	07/10/2006	EXAMINER'S AMENDMENT COMMUNICATION			
47	07/10/2006	NOTICE OF ALLOWABILITY			
46	05/16/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
45	05/16/2006	REFERENCE CAPTURE ON IDS			
44	05/16/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
43	05/25/2006	DATE FORWARDED TO EXAMINER			
42	05/16/2006	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
41	05/25/2006	DATE FORWARDED TO EXAMINER			
40	05/16/2006	REQUEST FOR CONTINUED EXAMINATION (RCE)			
39	05/25/2006	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
38	05/16/2006	WORKFLOW - REQUEST FOR RCE - BEGIN			
37	02/16/2006	MAIL FINAL REJECTION (PTOL - 326)			
36	02/13/2006	FINAL REJECTION			
35	12/10/2005	PARALEGAL TD ACCEPTED			
34	11/14/2005	TERMINAL DISCLAIMER FILED			
33	11/14/2005	NEW OR ADDITIONAL DRAWING FILED			
32	12/10/2005	DATE FORWARDED TO EXAMINER			

31	11/14/2005	RESPONSE AFTER NON-FINAL ACTION		31	28
30	11/14/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
29	10/06/2005	CASE DOCKETED TO EXAMINER IN GAU			
28	07/14/2005	MAIL NON-FINAL REJECTION	204		-1
27	07/11/2005	NON-FINAL REJECTION			
26	06/28/2005	CASE DOCKETED TO EXAMINER IN GAU			
25	06/21/2005	CASE DOCKETED TO EXAMINER IN GAU			
24	06/21/2005	CASE DOCKETED TO EXAMINER IN GAU			
23	06/14/2005	CASE DOCKETED TO EXAMINER IN GAU			
22	03/18/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
21	04/08/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
20	04/08/2004	CASE DOCKETED TO EXAMINER IN GAU			
19	01/16/2004	APPLICATION RETURN FROM OIPE			
18	01/16/2004	APPLICATION RETURN TO OIPE			
17	01/16/2004	APPLICATION DISPATCHED FROM OIPE			
16	01/16/2004	APPLICATION IS NOW COMPLETE			
15	12/09/2003	ADDITIONAL APPLICATION FILING FEES			
14	12/09/2003	AN ASSERTION THAT THE NATURE OF THE LEGAL ENTITIES HAVING PROPERTY RIGHTS TO THE PATENT AUTHORIZES T			
13	12/09/2003	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
12	11/20/2003	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
11	10/22/2003	ADDITIONAL APPLICATION FILING FEES			
10	10/22/2003	REPLACEMENT DRAWINGS (CHANGES THE FILING DATE)			
9	11/18/2003	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
4	11/08/2003	CASE CLASSIFIED BY L&R			
3	11/08/2003	CLEARED BY OIPE CSR			

Search Another: Application#

**EXPLANATION OF PTA CALCULATION**

**EXPLANATION OF PTE CALCULATION**